

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

THE PINES CHURCH and MATT)
GIOIA)
)
Plaintiffs)
)
v.) **Civil Action No. 1:23-cv-00214-LEW**
)
HERMON SCHOOL DEPARTMENT)
)
)
Defendant)

**STATEMENT OF MATERIAL FACTS OF DEFENDANT HERMON SCHOOL
DEPARTMENT**

Pursuant to Federal Rule of Civil Procedure 56(c)(1) and District of Maine Local Rule 56(b), Defendant Hermon School Department submits this Statement of Material Facts in support of its Motion for Summary Judgment.

1. The Hermon School Department (“HSD”) is a school district located in Hermon, Maine that operates an elementary school, a middle school and a high school. Declaration of Micah Grant (“Grant Decl.”) ¶ 3, a copy of which is attached.
2. HSD permits members of the community to use school facilities pursuant to School Board Policy KG which provides, in relevant part:

School facilities should be made available for appropriate community use when such facilities are not required for their primary purposes: the instruction of students and related school activities.

Grant Decl. ¶ 4, Exhibit 1.

3. For at least the past 10 years, HSD has not leased any property to an outside party. Grant Decl. ¶ 5; Stipulated Record, ECF Doc. 26, PageID #: 327 (Grant Dep. 33:5 15).

4. HSD has developed a process whereby community members who wish to use facilities fill out a Facilities Use Request Form specifying what space they want, when they want it and any special requests they may have. Grant Decl. ¶ 6.

5. Some groups ask for a single day, others ask for several days in one week or one or more days for several weeks. Further, some applicants require specific space whereas others are more flexible. Grant Decl. ¶ 8.

6. It is common for requests to use school facilities to be granted although occasionally they are denied when space is not available. Grant Decl. ¶¶ 9, 10.

7. The more flexibility the applicant has, the more likely it is that the request will be granted. Grant Decl. ¶ 10.

8. When school facilities are in use on a date and time requested the request is denied. Grant Decl. ¶¶ 9, 10.

9. HSD makes its facilities available to a broad spectrum of groups including groups running athletic events, community groups such as the Girl Scouts, and religious groups such as the Good News Club. Grant Decl. ¶ 11; Stipulated Record, ECF Doc. 26, PageID #: 454-455 (Grant Dep. 23:23- 24:5) and 512 - 531 (Grant Dep. Ex. 5).

10. HSD has never denied a request for any reason other than that the space requested was not available. Grant Decl. ¶ 12.

11. The Pines Church is a religious organization and Plaintiff Matt Gioia serves as its pastor. Stipulated Record, ECF Doc. 26, PageID##: 222 (Gioia Dep. 29:7-11), 362 - 363 (Gioia Dep. Ex. 5).

12. The Pines Church holds services at the Spotlight Theater in Orono. Stipulated Record, ECF Doc. 26, PageID#:314 (Gioia Dep. 121:15 – 22).

13. The Pines Church does not have a lease with Spotlight Cinema, they have a “gentleman’s agreement” that the Church can use the theater for church services and meetings. Stipulated Record, Doc. 26, PageID#: 314 (Gioia Dep. 121:15-22).

14. On September 23, 2022, Plaintiff Gioia reached out to the HSD on behalf of The Pines Church to inquire about leasing space at the Hermon High School for it to hold its Sunday Services. Stipulated Record, Doc. 26, PageID#: 426.

15. Gioia wanted to rent the school’s theater, its cafeteria and two classrooms every Sunday from 7:00am to 1:00pm for a one-year period. Stipulated Record, ECF Doc. 10, Page #66 (Amended Complaint ¶34); ECF Dec. 11, Page ID # 99 (Answer to Amended Complaint ¶34), Stipulated Record, Doc. 26, PageID##: 294 (Gioia Dep. 101:13-15), 296-297 (Gioia Dep. 103:25-104:1).

16. When making the request to use HSD facilities, Gioia acted on behalf of the Church not for himself personally. Stipulated Record, Doc. 26, PageID#: 426.

17. This was the first time that Superintendent Grant had ever been asked about a lease for the use of school facilities. Grant Decl. ¶ 5.

18. Upon receiving the request from Gioia, Superintendent Grant consulted the Board Policy on community use which mandated a Board vote for the granting of a long-term lease so he decided to refer the request to the Board. Grant Decl. ¶ 17.

19. Superintendent Grant gave several church members a tour of the school facilities, then directed them to the School Board to make their request. Grant Decl. ¶ 17.

20. On November 7, 2022, Gioia presented to HSD the Church’s “heart in wanting to serve the needs of the community.” Stipulated Record, Doc. 26, PageID#: 307 (Gioia Dep. 114:19).

21. On November 8, 2022, Chris McLaughlin, an HSD Board member, reached out to Gioia with follow up questions regarding Gioia's presentation. Stipulated Record, ECF Doc. 26, PageID#: 422.

22. Gioia responded that he would like the HSD member to "funnel all questions through the Superintendent." Stipulated Record, ECF Doc. 26, PageID#: 421.

23. In response, McLaughlin sent an email to Superintendent Grant asking about The Pines Church's views on same sex marriage, access to abortion, access to gender affirming medical care, conversion therapy, and sexual education for youth. Stipulated Record ECF Doc. 26, PageID##: 419-420.

24. On November 10, 2022, Superintendent Grant sent Gioia the member's follow up questions. Stipulated Record, ECF Doc. 26, PageID##: 310 (Gioia Dep. 117: 16-19); 292 (Gioia Dep. 99:17- 100:3), 322 (Gioia Dep. 129:2 – 5); 419 (Gioia Dep. Ex. 10).

25. Gioia responded by asking if are these questions you ask everyone who seeks a lease. The Superintendent of HSD responded "no, but no one has ever asked for a year-long lease." Stipulated Record, ECF Doc. 26, PageID##: 310 (Gioia Dep. 117:3 – 15).

26. Gioia never answered the questions asked in McLaughlin's email. Stipulated Record, Doc. 26, PageID# 310 (Gioia Dep. 117:2 – 9).

27. On December 12, 2022, the HSD School Board met to consider The Pines Church's proposal. HSD School Board member Shorey moved to extend a six-month lease to The Pines Church, but that motion failed for lack of a second by any of the seven members of the School Board. Stipulated Record, ECF Doc. 26, PageID#:492.

28. HSD School Board Member Oiler moved to offer the Pines Church a month-to-month lease and that motion passed. Stipulated Record, ECF Doc. 26, PageID#:492-493.

29. Plaintiffs' religious beliefs were never discussed when deciding whether or not to offer a long-term lease. Stipulated Record, ECF Doc. 26, PageID##: 460 (Grant Dep. 29:6-9).

30. HSD's offer of a month-to-month lease was rejected by Plaintiffs because, as Gioia explained "it would be hard for us to advertise for an Easter service if we didn't know we were going to be there the following month . . . and it would take a tremendous amount of effort for us to take all of our equipment, to move over there only to find out that, well, you fulfilled this month, it's not available next month." Stipulated Record, ECF Doc. 26, PageID#: 314 (Gioia Dep. 121:8-14).

31. Plaintiffs currently have a month-to-month lease at the Spotlight Theater. Doc. 26, PageID#:314 (Gioia Dep. 121:15-22).

32. McLaughlin voted against the motion to give The Pines Church a lease because he felt that the request should go through the facilities use request process. Stipulated Record, ECF Doc. 26, PageID#: 54 (Answer to Interrogatory No. 5).

33. Gioia never asked for a lease for less than a one-year period. Stipulated Record, ECF Doc. 26, PageID # 313 (Gioia Dep. 120:3 -16).

34. The HSD School Board does not consider a lessee's religious beliefs when deciding whether to allow use of its facilities. Stipulated Record, ECF Doc. 26, PageID#: 611 (McLaughlin Dep. 14: 18-21).

Dated: January 22, 2024

/s/ Melissa A. Hewey
Melissa A. Hewey
Attorney for Defendant Hermon School Department

Drummond Woodsum
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 772-1941
Fax: (207) 772-3672
mhewey@dwmlaw.com